

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAIRY FARMERS OF AMERICA,
et al.

Defendants.

Civil Action No. 00-1663

MOTION FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16 (b)-(h), the United States moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding on May 18, 2000. The Final Judgment may be entered at this time without further hearing if the Court determines that such entry is in the public interest. The Competitive Impact Statement ("CIS"), filed on June 30, 2000, explains why entry of the proposed Final Judgment is in the public interest. The United States has filed simultaneously with this Motion its Certificate of Compliance with the Provisions of the Antitrust Procedures and Penalties Act ("Certificate of Compliance"), setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

I.

Background

The United States filed a civil antitrust Complaint on March 31, 2000, alleging that the proposed acquisition by the Dairy Farmers of America, Inc. ("DFA") of SODIAAL North America Corporation ("SODIAAL") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleged that DFA and SODIAAL were two of only three significant producers supplying branded butter, including branded stick butter and branded whipped butter, to retail purchasers and other consumers in the greater Philadelphia and New York metropolitan areas, and that DFA's acquisition of SODIAAL would give the merged firm the ability and incentive to substantially lessen competition in the sale of such butter, in violation of Section 7 of the Clayton Act.

As required by the proposed Final Judgment, defendants formed a limited liability company which, under its governing organizational and operational provisions, will ensure continued competition in the sale of branded butter in the greater Philadelphia and New York metropolitan areas. In particular, the proposed Final Judgment will ensure continued competition between the limited liability company and Land O' Lakes, an agricultural cooperative with which the merged firm could otherwise federate to the detriment of consumers and retailers in the area.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Final Judgment and to punish violations of it.

II.

Compliance with the APPA

The APPA requires a sixty (60) day period for the submission of public comments on the proposed Final Judgment. 15 U.S.C. § 16(b). The Certificate of Compliance, filed by the United States with this Court simultaneously with this Motion, certifies that the United States has met the requirements of the APPA, and received no comments on the proposed Final Judgment during the comment period. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III.

Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment is in the "public interest." In making that determination, the Court may consider:

- (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
- (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its CIS, previously filed with the Court on June 30, 2000, the United States has explained the meaning and proper application of the public interest standard under the APPA and

incorporates those statements here by reference.

There has been no showing that the proposed settlement constitutes an abuse of the Justice Department's discretion or that it is not consistent with the public interest.

IV.

Conclusion

For the reasons set forth in this Motion, in the Competitive Impact Statement, and in the Certificate of Compliance, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The United States respectfully requests that the proposed Final Judgment be entered expeditiously.

Respectfully Submitted,

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Dated: October 4, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October 2000, I caused copies of the MOTION FOR ENTRY OF FINAL JUDGMENT and UNITED STATES' CERTIFICATE OF COMPLIANCE WITH THE PROVISIONS OF THE ANTITRUST PROCEDURES AND PENALTIES ACT to be served upon the following:

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